

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2009-0240-PR
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ALONZO JAMERSON, JR.,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR200800285

Honorable Janna L. Vanderpool, Judge

REVIEW GRANTED; RELIEF DENIED

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H O W A R D, Chief Judge.

¶1 Petitioner Alonzo Jamerson, Jr., seeks review of the trial court’s denial of sentencing relief he requested pursuant to Rule 32, Ariz. R. Crim. P. After entering a plea agreement, Jamerson was convicted of one count each of sexual assault and attempted sexual assault. The court sentenced him to an aggravated term of fourteen years in prison for the sexual assault, to be followed by a consecutive, suspended sentence and lifetime probation for his attempted sexual assault conviction.

¶2 At the sentencing hearing, the trial court had found community support and Jamerson’s need to support two minor children as mitigating circumstances. As aggravating circumstances, it found Jamerson had: (1) inflicted serious physical injury; (2) caused the victim emotional harm; (3) lured the victim to Pinal County under false pretenses; (4) been convicted of a felony within the ten years immediately preceding the date of these offenses; (5) previously committed a similar offense, based on the circumstances underlying his prior conviction for aggravated assault, and thereby demonstrated “a continuing type of behavior”; (6) committed the offenses while on probation or warrant status; (7) failed to benefit from past lenient treatment; and (8) failed to exhibit remorse for his crimes. Facts in support of each of these aggravating factors appeared in the probation department’s presentence report or were argued by the state, and Jamerson did not contest them.¹

¹Although Jamerson argued he had not been convicted previously of sexual assault, he did not dispute the state’s assertion that his prior conviction for aggravated assault was based on his allegedly having struck and sexually assaulted an inebriated woman. No trial was held on those allegations because Jamerson, then a juvenile being tried as an adult, had pleaded guilty to aggravated assault.

¶3 Jamerson filed a timely notice of post-conviction relief. In the of-right Rule 32 petition that followed, he alleged his aggravated sentence was illegal. He generally asserted the aggravating circumstances found by the trial court were essential elements of the offenses to which he had pleaded guilty, were “double counted,” or were not supported by the evidence. Although his specific contentions were somewhat unclear, Jamerson appears to have argued that: (1) the victim’s injuries were not sufficiently serious to warrant a finding of serious physical injury; (2) the trial court “double-counted” this circumstance when it found he had caused physical and emotional harm; and (3) physical and emotional harm were essential elements of sexual assault that were already reflected in the presumptive sentence for that offense and, therefore, could not be considered in aggravation. He also maintained the court erred in finding his commission of the offense “cruel, heinous or depraved” based on Jamerson’s deception in luring the victim to meet him; in finding his prior felony conviction was for a crime of a similar nature; and in finding, in Jamerson’s words, “a continuing course of conduct.” Finally, he argued the court had “failed to balance the aggravating and mitigating circumstances” before sentencing him, and he asserted his one prior felony conviction—an aggravating circumstance Jamerson did not challenge in his petition—was “insufficient to warrant a maximum term of incarceration.”

¶4 The trial court summarily denied relief, finding Jamerson’s claims unsupported by the record. By way of example, the court noted it had declined at sentencing to find the offense had been heinous, cruel, or depraved but had stated, “I am going to find that you did

. . . apparently lure this woman to Pinal County under false pretenses and that that indicates a planning and an intention to commit a criminal act.”

¶5 In his petition for review, Jamerson argues the trial court failed to address his challenges to other aggravating factors and maintains the court’s denial of relief is “in direct contravention to” *State v. Schmidt*, 220 Ariz. 563, 208 P.3d 214 (2009). In *Schmidt*, our supreme court held the “[u]se of the catch-all [provision in former A.R.S. § 13-702(D)(13)] as the sole factor to increase a defendant’s statutory maximum sentence violates due process.” *Id.* ¶ 10. Jamerson argues the same reasoning should apply in his case because “[m]ost of the factors” the court considered in aggravation fell under a similar catch-all provision in effect when he committed these offenses. Because he did not raise this argument in his petition for post-conviction relief, however, we will not address it on review. *See* Ariz. R. Crim. P. 32.9(c) (petition for review to contain issues “decided by the trial court . . . which the defendant wishes to present to the appellate court for review”); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court does not consider issues in petition for review that “have obviously never been presented to the trial court for its consideration”).

¶6 In a single, conclusory paragraph, without the record citations required by Rule 32.9(c)(1), Jamerson also maintains certain aggravating circumstances found by the trial court were not supported by the evidence. Specifically, he argues there was no support in the record for the court’s findings that the victim had suffered serious physical injury, that

Jamerson “had planned to commit the crime and had lured the victim to Casa Grande” for that purpose, that he “had a prior felony conviction for a similar offense,” and “that this offense was not an isolated incident, but a continuing course of conduct.” Although the court did not address each of his claims individually, we find no abuse of discretion in its denial of post-conviction relief. *See State v. Mata*, 185 Ariz. 319, 331, 916 P.2d 1035, 1047 (1996) (reviewing court will not disturb denial of post-conviction relief absent abuse of discretion).

¶7 According to the presentence report, Margarita B., a Phoenix resident, told police investigators she had spoken on a telephone chat line with a man named Chris and had arranged to meet him in Casa Grande. When she arrived at the appointed location, Jamerson, who did not match Chris’s description, entered her van and told her Chris had sent him to meet her and that he would take her to Chris’s house after Chris got home from work. Eventually, Jamerson asked Margarita if she would have sex with him. When she refused, he pushed her head against the window and forced her into the back of her van, stripped her clothes off, and forced her to engage in sexual intercourse and fellatio. Margarita said Jamerson had burned her finger with a cigarette and had “messed her up inside,” causing her to experience continuing abdominal pain. Margarita told the probation officer who prepared the presentence report that she continued to have medical problems as a result of the sexual assault. The probation officer reported he had also ascertained Jamerson’s 2004 conviction for aggravated assault was based on allegations that he had struck an inebriated woman and then sexually assaulted her on a bathroom floor.

¶8 Jamerson develops no legal arguments to explain why this evidence was insufficient to support the trial court’s findings in aggravation, and merely raising an argument in passing is not sufficient to sustain his burden of demonstrating his sentence was “not in accordance with the sentence authorized by law.”² Ariz. R. Crim. P. 32.1(c); *see also* Ariz. R. Crim. P. 32.9(c)(1) (petition for review shall contain “the reasons why the petition should be granted” and “specific references to the record”); *cf. State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004) (“[m]erely mentioning an argument is not enough”; failure to argue claim constitutes abandonment on appeal). Similarly, to show his claims were colorable and thus not subject to the court’s summary denial, Jamerson must establish that, if his allegations are true, the resulting sentence might have been different. *See State v. Runningeagle*, 176 Ariz. 59, 63, 859 P.2d 169, 173 (1993). Jamerson articulates no such

²Because Jamerson does not challenge the trial court’s finding that he had a prior felony conviction in the ten years immediately preceding these offenses, he cannot sustain an argument that “[t]he sentence imposed exceeded the maximum authorized by law,” the other ground for relief under Rule 32.1(c). As the court in *Schmidt* explained:

When one or more clearly enumerated aggravators are found consistent with *Apprendi* [*v. New Jersey*, 530 U.S. 466 (2000),] and they allow imposition of an aggravated sentence under the relevant statutory scheme, the “elements” of the aggravated offense will have been identified with sufficient clarity to satisfy due process. Subsequent reliance on other factors embraced by a catch-all provision to justify a sentence up to the statutory maximum comports with the traditional discretionary role afforded judges in sentencing.

Schmidt, 220 Ariz. 563, ¶ 11, 208 P.3d at 217.

argument. He has therefore failed to meet his burden of showing he is entitled to Rule 32 relief.

¶9 In sum, we find no abuse of discretion in the trial court's denial of Jamerson's Rule 32 petition. Accordingly, although we grant review, we deny relief.

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

PHILIP G. ESPINOSA, Presiding Judge

PETER J. ECKERSTROM, Judge